

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **944/CHNY/2017**

निर्धारण वर्ष/Assessment Year: 2013-14

The Assistant Commissioner of  
Income Tax  
Central Circle 2,  
No.44, Williams Road,  
Cantonment,  
**Trichy – 620 001.**

Dr. S. Kulanthaian,  
No.26-A, Agraharam,  
Aranthangi,  
**Pudukkottai Dist. – 614 616.**

(अपीलार्थी/Appellant)

**PAN: AHZPK 0911G**  
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri P. Sajit Kumar, IRS, JCIT  
प्रत्यर्थी की ओर से/Respondent by : Shri. S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing : 26.09.2023  
घोषणा की तारीख/Date of Pronouncement : 12.10.2023

**आदेश / O R D E R**

**PER MAHAVIR SINGH, VICE PRESIDENT:-**

This appeal filed by the Revenue is arising out of the order of the Commissioner of Income Tax (Appeals)-19, Chennai in ITA No.285/15-16 dated 31.01.2017. The assessment was framed by the Deputy Commissioner of Income Tax, Central Circle-2, Tiruchirappalli for the assessment year 2013-

2014 u/s.143(3) of the Income Tax Act, 1961 (hereinafter 'the Act'), vide order dated 04.02.2016.

2. The first issue in this appeal of Revenue is as regards to the order of Commissioner of Income Tax (Appeals) (hereinafter 'the CIT(A)') deleting the addition made towards unexplained cash credits arising from unexplained bank deposits to the tune of Rs.6,09,30,410/- (in the grounds of appeal filed by the Revenue the amount wrongly mentioned as Rs.6,30,00,000/-). The Revenue has also raised the issue of violation of Rule 46A(3) of the Income Tax Rules, 1962 (hereinafter 'the Rule') for entertaining the additional evidences produced before the CIT(A). For this issue, the Revenue has raised the following grounds of appeal.

*'2. The Ld.CIT (A) is not justified in deleting the addition of Rs.6,30,05,000/-, made by the AO towards unexplained cash credit, arising from unexplained bank deposits in the assessment Order passed for the AY 2013-14.*

*2.1 On the facts and circumstances of the case and having regard to the reasons stated by the AO in the assessment order for the A.Y 2013-14, the Id CIT(A) ought to have upheld the addition of Rs.6,30,05,000/- made towards unexplained cash credit arising from unexplained bank deposits.*

*3 The Ld. CIT(A) erred in allowing relief to the assessee by entertaining additional evidences produced by the assessee during appeal proceedings, without allowing any opportunity to the AO to examine the same, in contravention of Rule 46A(3) of I.T. Rules, 1962, as evident from para 4 of the Id CIT(A)'s orders''.*

3. The brief facts of the case are that the assessee has filed his return of income electronically for the relevant assessment year 2013-2014 on

03.08.2013. The assessee's case was selected for scrutiny and accordingly notice u/s. 143 (2) of the Act was issued on 02.09.2014. The Assessing Officer during the course of assessment proceedings noted from the AIR information that there are cash deposits in assessee's bank account to the tune of Rs.6,09,30,410/-. The Assessing Officer required the assessee to produce bank statements and accounts held by him and also substantiate cash deposits with documentary evidence. The Assessing Officer accorded opportunities to substantiate the cash deposits but the assessee only submitted the following details.

- '1. *List of persons to whom the moneys were lent long with their detailed addresses.*
2. *The date of lending such money and receiving the same as repayment from the respective persons, in order to prove the claim of recycling of money.*
3. *Documentary exchange with the borrowers such as promissory notes or registered deeds, if any".*

The Assessing Officer noted that the assessee has not maintained any books of accounts nor any list of borrowers. As the assessee failed to explain the source of cash deposits with documentary evidences, he added back the cash deposits made in his bank account amounting to Rs.6,09,30,410/- as undisclosed income of the assessee. Aggrieved, assessee preferred an appeal before the CIT(A).

5. The CIT(A) considering the submissions of the assessee that the assessee is in the business of money lending for the past many years and the deposits and withdrawals represents the transaction in the money lending business.

The CIT(A) accepted the submission of the assessee and deleted addition of Rs.6,09,30,410/- by observing as under:-

'4. The AR has also submitted copies of letters dated 25.10.2015, 03.11.2015 and 16.11.2015 wherein, the assessee had submitted various details including the balance sheet, statement of income, break up of business income declared, cash flow statement and the like. The AR has also submitted detailed copies of all bank account statements and has explained each of the entries contained therein. The AR has also explained the business practices of the assessee and the accounting of interest income on account of money lending business conducted. The amounts received from rented properties in the common bank accounts of the assessee and regularly offered to taxation have also been highlighted. The balance sheet reflects a total liability of Rs.9.47 Crores including a capital account of Rs.3.77 crores of the assessee. On the asset side, the fixed non income bearing assets of the assessee are computed at Rs.8.15 crores whereas the current assets are shown at Rs. 1.31 crores. As per the computation of income the assessee has shown a business income of Rs.31.47 crores out of total income offered to tax at Rs.64,52,121. The assessee is maintaining books of accounts in a rudimentary form with bank account ledger extracts as source of information. The assessee has been lending and receiving amounts through his bank accounts. There have been regular transactions in the bank accounts of the assessee. It would be incorrect on the part of the AO to bring the gross amount of all deposits for taxation. The assessee has explained the cash flow as well as the peak cash Credit during the year. Considering the above, there is no merit in bringing the gross amounts of bank credits for taxation. The addition is deleted".

Aggrieved, now Revenue is in appeal before us.

6. Before us, the Senior Departmental Representative argued that the Id. CIT(A) had noted in the appellate order para 4 that the assessee has submitted various details including balance sheet, statement of income, break up of business income declared, cash flow statement etc. He also noted that the assessee also submitted details of copies of bank account statements

and explained each of the entries contained therein and also explained business practices and accounting of interest income on account of money lending business conducted. The Senior Departmental Representative further stated that assessee has not filed any evidence before the Assessing Officer, even all the details if any, whatsoever, were filed before the Id. CIT(A) for the first time and the Id. CIT(A) did not examine the same as is evident from the assessment order and deleted the addition of cash deposits made by the Assessing Officer as unexplained. Hence, he stated that Id. CIT(A) should not have accepted the explanation of the assessee in rudimentary form and also not have accepted the peak credit in a purported manner.

7. On the other hand, the Id.counsel for the assessee only requested that the matter can be remitted back to the file of the Assessing Officer in view of the plea raised with regard to violation of Rule 46A(3) of the Rule for filing of additional evidences before the Id. CIT(A) for the first time. Ld. counsel stated that the Assessing Officer would re-examine the issue entirely and then decide the matter according to law. The Id. Counsel for the assessee requested to accept peak credit because assessee has explained cash deposits and withdrawals. He stated that the deposits are made out of withdrawals.

8. After hearing both the sides and going through the facts of the case, we noted that assessee before the Assessing Officer did not file any evidence whatsoever to explain the cash deposits made in the bank account nor filed any documentary evidence to substantiate his claim. We also noted from the

order of the Id. CIT(A) and the argument of the Id. Departmental Representative that the assessee filed various details including the balance sheet, statement of income, break up of business income declared, cash flow statement, detailed copies of the bank statements explaining entries contained therein before the Id. CIT(A) and the Id. CIT(A) accepted the plea of the assessee. It is not clear how he accepted the same because there is no fact mentioned in the order for explanation of the entries. Nothing is coming out of the order. In the fitness of the things and in the interest of natural justice, we feel that assessee should produce all the documentary evidence before the Assessing Officer who will examine the details of cash deposits and then will decide whether the cash deposits are explained or not. Assessee will also file source of cash deposits.

**9.** The plea of Id. Counsel for the assessee that peak credit should be accepted for the purpose of explanation of cash deposits are made out of cash withdrawals, we direct the AO to accept the theory of peak credit but the cheque entries cannot be included for the purpose of peak credit unless he could explain how the cheque amounts has gone and how he received back. If he can explain the cash deposits out of the same, the AO will accept. In term of the above, we set aside the order of the Assessing Order and that of the Id. CIT(A) and remand the issue back to the file of the Assessing Officer for fresh adjudication. Accordingly, this issue raised by the Revenue is allowed for statistical purpose.

10. The next issue raised by the Revenue in this appeal is with regard to the order of Id. CIT(A) deleting the disallowance made towards loss from chit amount made by the Assessing Officer amounting to Rs.16,34,895/-. For this, the Revenue has raised the following grounds of appeal.

*'4. The Ld.CIT (A) is not justified in deleting the disallowance of Rs.16,34,895/-, made by the AO towards loss from chit fund in the assessment order passed for the AY 2013-14.*

*4.1. On the facts and circumstances of the case and having regard to the reasons stated by the AO in the assessment order for the A.Y 2013-14, the Id CIT(A) ought to have upheld the disallowance of Rs.16,34,895/- made towards loss from chit fund".*

11. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that assessee has claimed chit amount loss of Rs.6,21,848/- against income from other sources of Rs.61,00,000/-. We noticed that assessee has not produced any evidence before the Assessing Officer. The Id. CIT(A) just noting made on the prima facie view deleted the addition by discussing in para 6 of his order as under:-

*'6. The submissions of the assessee are considered. The assessee regularly participates in chits and uses the said money in the money lending business conducted. The balance sheet as well as the cash flow statement depicts the amounts advanced and received back from various chits. The bank account extracts also reflect the advances and receipts from chits. These monies are ploughed into the money lending business of the assessee. To this extent, it would be incorrect on the part of the AO to say that the decision of Hon'ble Supreme Court in the case of Bilahari Investments (215 CTR 201 - 2008) as inapplicable. The assessee has been in the regular business of money lending and the advances and withdrawals from chits have been utilized for money lending business. Considering the same, the*

AO is directed to allow the loss from chits claimed of Rs.6,21,848 for the year''.

In the interest of natural justice, we direct the assessee to produce all the evidence of chit fund loss before the Assessing Officer and the Assessing Officer will reconsider the issue entirely afresh after affording due opportunity of hearing to the assessee. Hence, we set aside the order of the Assessing Officer and the Id. CIT(A) on this issue and remit the matter back to the file of the Assessing Officer for fresh adjudication. Accordingly, this issue raised by the Revenue is allowed for statistical purpose.

12. In the result, the appeal filed by the Revenue in ITA No.944/Chny/2017 for assessment year 2013-2014 is allowed for statistical purpose.

Order pronounced on 12<sup>th</sup> day of October, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 12th October, 2023

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.